

UNITED STATES DISTRICT COURT  
FOR THE COMMONWEALTH OF MASSACHUSETTS

DEBORAH KELLY,

Plaintiff,

v.

PAUL DONNELLY, MICHAEL BYERS, SGT.  
KEITH JACKSON, OFFICER JOHN DOE, in their  
individual and official capacities, and the TOWN  
OF ROCKLAND, MASSACHUSETTS,

Defendants.

DOCKET NO.: 05 10750 RWZ

BEK

**ANSWER OF ALL DEFENDANTS**  
**AND JURY DEMAND**

**FIRST DEFENSE**

The plaintiff's Complaint fails to state a claim against the defendants upon which relief can be granted.

**SECOND DEFENSE**

The plaintiff's Complaint fails to state a claim against the defendants upon which relief can be granted in that the defendants have no obligation to pay the plaintiff any amount of the loss or damages alleged.

**THIRD DEFENSE**

The defendants respond to the allegations contained in the plaintiff's Complaint, paragraph by paragraph, as follows:

**Jurisdiction**

1. The defendants neither admit nor deny the allegations contained in this paragraph as they are mere conclusions of law to which no response is required. In the event a response is nonetheless required, the defendants deny plaintiff is entitled to recover under the statutes cited, but do not contest the jurisdiction of this Court.

2. The defendants neither admit nor deny the allegations contained in this paragraph as they are mere conclusions of law to which no response is required. In the event a response is nonetheless required, the defendants deny plaintiff is entitled to recover under his state law claims, but do not contest the jurisdiction of this Court.

**Parties**

3. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and, therefore, neither admit nor deny the same.

4. The defendants admit the allegations set forth in this paragraph.

5. The defendants admit the allegations set forth in this paragraph.

**General Allegations**

6. The defendants admit the allegations set forth in this paragraph.

7. The defendants admit the allegations set forth in this paragraph.

8. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and, therefore, neither admit nor deny the same.

9. The defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph and, therefore, neither admit nor deny the same.

10. The defendants admit the allegations set forth in this paragraph.

11. The defendants admit that, after the plaintiff drove her truck at Officer Donnelly and struck him in the left arm with the driver's side mirror, she drove onto the property of George Stoddard and stopped near his front door.

12. The defendants admit that, after the plaintiff struck Officer Donnelly with her truck and then refused many requests to turn off the engine and get out of her truck, Officer Donnelly used his ASP baton to break the driver's side window of the plaintiff's truck.

13. The defendants admit that the plaintiff ran into Stoddard's home and deny the remaining allegations set forth in this paragraph.

14. The defendants admit that at least four Rockland police officers, Donnelly, Byers, Jackson and Somers, followed Kelly into the home. The defendants lack knowledge or information sufficient to form a belief as to whether the residence was the plaintiff's "home," and, therefore, neither admit nor deny the same.

15. The defendants deny the allegations set forth in this paragraph.
16. The defendants deny the allegations set forth in this paragraph.
17. The defendants deny the allegations set forth in this paragraph.
18. The defendants deny the allegations set forth in this paragraph.
19. The defendants deny the allegations set forth in this paragraph.
20. The defendants deny the allegations set forth in this paragraph.
21. The defendants deny the allegations set forth in this paragraph.
22. The defendants admit the allegations set forth in this paragraph.

**Count I**

23. The defendants repeat and incorporate by reference their responses to paragraphs 1 - 22 above.

24. The defendants deny the allegations set forth in this paragraph.
25. The defendants deny the allegations set forth in this paragraph.
26. The defendants deny the allegations set forth in this paragraph.
27. The defendants deny the allegations set forth in this paragraph.
28. The defendants deny the allegations set forth in this paragraph.
29. The defendants deny the allegations set forth in this paragraph.
30. The defendants deny the allegations set forth in this paragraph.

**Count II**

31. The defendants repeat and incorporate by reference their responses to paragraphs 1 - 30 above.

32. The allegations set forth in this paragraph are unintelligible such that the defendants cannot fairly respond. To the extent that this paragraph intends to allege a violation of a duty owed by the defendants, this paragraph is denied.

33. The allegations set forth in this paragraph are unintelligible such that the defendants cannot fairly respond. To the extent that this paragraph intends to allege a breach of a duty owed by the defendants, this paragraph is denied.

34. The defendants deny the allegations set forth in this paragraph.

35. The defendants deny the allegations set forth in this paragraph.

36. The defendants deny the allegations set forth in this paragraph.

### **Count III**

37. The defendants deny the allegations set forth in this paragraph.

38. The defendants deny the allegations set forth in this paragraph.

39. The defendants deny the allegations set forth in this paragraph.

40. The defendants deny the allegations set forth in this paragraph.

41. The defendants deny the allegations set forth in this paragraph.

42. The defendants deny the allegations set forth in this paragraph.

43. The defendants deny the allegations set forth in this paragraph.

44. The defendants deny the allegations set forth in this paragraph.

### **Count IV**

45. The defendants repeat and incorporate by reference their responses to paragraphs 1 - 44 above.

46. The defendants deny the allegations set forth in this paragraph.

47. The defendants deny the allegations set forth in this paragraph.

48. The defendants deny the allegations set forth in this paragraph.

49. The defendants deny the allegations set forth in this paragraph.

50. The defendants neither admit nor deny the allegations contained in the first sentence of Paragraph 50 as they are mere statements of law to which no response is required. The defendants deny the remaining allegations set forth in this paragraph.

51. The defendants deny the allegations set forth in this paragraph.

52. The defendants deny the allegations set forth in this paragraph.

53. The defendants deny the allegations set forth in this paragraph.

54. No response is required to plaintiff's jury demand.

#### **FOURTH DEFENSE**

The defendants state that their actions and conduct were protected by law and/or legal process and, therefore, the plaintiff cannot recover.

#### **FIFTH DEFENSE**

The defendants, Donnelly, Byers, Jackson and Doe, at all times material hereto, acted reasonably, within the scope of their official discretion and with a good faith belief that their actions were lawful and not in violation of any clearly established statutory or constitutional right of which a reasonable person would have known with regard to all matters set forth in the Complaint which bear on a question of state or federal law.

#### **SIXTH DEFENSE**

The defendants, Donnelly, Byers, Jackson and Doe, state that their actions are entitled to protection from liability under the doctrine of qualified immunity.

#### **SEVENTH DEFENSE**

The defendants state that they were privileged in their conduct and actions and, therefore, the plaintiff cannot recover.

#### **EIGHTH DEFENSE**

The defendants state that no policy, custom or practice of the Town of Rockland caused plaintiff's alleged civil rights deprivations and, therefore, the plaintiff cannot recover.

#### **NINTH DEFENSE**

The defendants did not deprive the plaintiff of any rights secured by the Constitution or laws of the United States and, therefore, the plaintiff cannot recover.

#### **TENTH DEFENSE**

The defendants state that the plaintiff was subjected only to reasonable force, which was justified to protect a fellow officer and to prevent plaintiff's interference with a lawful arrest. Therefore, the plaintiff cannot recover.

#### **ELEVENTH DEFENSE**

The defendants were justified in their conduct and acts and, therefore, they are not liable to the plaintiff.

#### **TWELFTH DEFENSE**

Any injuries suffered by the plaintiff as alleged in the Complaint were the result of her own intentional and illegal conduct.

#### **THIRTEENTH DEFENSE**

The defendants state that the plaintiff's action is barred by the applicable statute of limitations.

#### **FOURTEENTH DEFENSE**

The defendants state that the plaintiff failed to make proper presentment, and, therefore, his recovery is barred by virtue of M.G.L. c. 258, §4.

**JURY DEMAND**

The defendants demand a trial by jury on all issues.

The Defendants,

By their attorneys,

**PIERCE, DAVIS & PERRITANO, LLP**

A handwritten signature in cursive script, reading "Jeffrey M. Sankey", written over a horizontal line.

Jeffrey M. Sankey, BBO #551062

Ten Winthrop Square

Boston, MA 02110

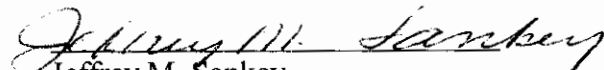
(617) 350-0950

Dated: May 19, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that this 19<sup>th</sup> day of May, 2005, a true and accurate copy of the Answer of All Defendants and Jury Demand was served, via first-class, postage prepaid mail, on the following:

Daniel S. Sharp, Esq.  
Law Offices  
48 Locust Street  
Marblehead, MA 01945

  
Jeffrey M. Sankey